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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOE MORA,

Defendant and Appellant.

D069066

(Super. Ct. No. SCD251068)

APPEAL from a judgment of the Superior Court of San Diego County, Francis M. Devaney, Judge. Affirmed.

Arthur Martin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Theodore M. Cropley and Warren J. Williams, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant Joe Mora in 2015 for a murder he committed in 1999. His sole challenge on appeal is that the prosecution team violated his due process right to a fair trial by improperly manipulating a witness to "reclaim inculpatory statements [about defendant] she had disavowed as lies." Specifically, after defendant's girlfriend, Alicia Ayala, recanted her statement that defendant admitted to her that he was involved in the crime, the prosecution team played her some recordings of sexually charged jailhouse phone calls between defendant and another woman. Ayala then retracted her recantation and reimplicated defendant. He asserts this amounted to governmental misconduct that deprived him of a fair trial. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I. The 1999 Murder and Investigation

About 7:00 p.m. on November 28, 1999, Cecilia and Sergio Morales were watching a movie in their Chula Vista home when they heard a knock at the door. Cecilia peeked through the blinds and saw a woman who appeared to be Filipino. With the door still closed, the visitor said, "We are your neighbors. We're looking for our cat. We would like to see whether it's in the back." Sergio opened the door and a man and a woman repeated that they were looking for their cat. Sergio quickly closed the front door and went with Cecilia to look in their back yard, but they did not see a cat. They returned to the front door and Sergio opened it. The door flew open, as if pushed hard, and hit a tall vase in the foyer. Cecilia saw a man, who appeared to be Filipino or Hawaiian, wearing something dark on his head, like a bandanna. The man tried to push Sergio, but Sergio pushed back and he and the man ended up on the porch. Cecilia closed the door

and heard the male stranger yelling. Then she heard gunshots. Cecilia ran, hid, and called the police.

When police arrived moments later, they found Sergio's body in a pool of blood on the Moraleses' front porch. An autopsy confirmed Sergio had been shot three times. Investigators recovered four shell casings from a semiautomatic handgun around the front porch. They also found a black knit cap (or beanie) tied with a rubber band near Sergio's body, and a multi-colored hat in a neighboring driveway.

Police canvassed the neighborhood for potential witnesses. One woman who was visiting her sister down the street told police she had seen a dark SUV drive slowly back and forth at least 10 times around 6:30 or 7:00 p.m.

Police showed Cecilia a photographic lineup of potential suspects. Although she said she was not certain, she said one face impacted her "[i]n her heart" more than any of the others. The man she identified was quickly cleared of any suspicion. Cecilia then worked with police to develop composite sketches of the suspects.

II. *The Cold Case Investigation*

In 2002, a criminalist cut four swatches from the beanie and tested them for DNA. All four samples contained partial DNA profiles from three to four individuals; each had the same "partial major contributor." The profile for that partial major contributor was entered into the CODIS DNA database in late December 2002 or early January 2003.

In 2009, defendant was arrested on unrelated charges and his DNA profile was entered into CODIS, resulting in a hit against the 2002 profile. A crime lab analyst determined there was a 1 in 200 million chance that a Hispanic person (defendant is of

Mexican descent) chosen at random would match that particular profile. Detective Robert Conrad of the Chula Vista Police Department, a cold case investigator, began investigating defendant. Conrad noticed that photographs of defendant from around the time of the murder resembled the composite sketch of the male suspect.

On September 5, 2012, Conrad and San Diego District Attorney Investigator Erik Nava interviewed defendant in Los Angeles County as he was being discharged from parole on an unrelated offense. In a taped interview, Conrad told defendant his DNA was found on a beanie recovered at the scene of a 1999 homicide in Chula Vista. Defendant denied knowledge of the shooting and claimed to have never owned or possessed a gun.

Conrad interviewed several of defendant's ex-girlfriends, all of whom eventually testified at trial.

A. Holly Evans

Holly Evans lived with defendant in Los Angeles County in 1999. They were together for approximately six years and had a child together. Evans testified defendant disappeared a few weeks before the murder and resurfaced about one week after.¹ She said that when she and defendant fought, he usually went to the San Diego area, where he had family. She recalled seeing defendant with a semiautomatic handgun tucked into his waistband at their home sometime before 2000. She had seen defendant wear black

¹ She explained she remembered the timing because she was pregnant and defendant kicked her, sending her to the hospital and leading to a misdemeanor conviction for defendant.

beanies and other items to keep his hair pulled back. Evans stated people have mistaken defendant as being of Asian descent.

B. *Clara Garcia*

Clara Garcia and defendant dated from 2004 to 2007 and have a child together. Garcia has a permanent restraining order against defendant—he hit her more than 20 times during their relationship, including one occasion when he was convicted of misdemeanor domestic violence for pushing her when she was nine months pregnant.

Early in their relationship, Garcia was studying criminal justice and watched forensic science shows on television. On one occasion, she and defendant were watching an episode about a cold case that was solved with DNA evidence. Defendant asked, "How long does it take for DNA to catch up to you?" Garcia responded that the case in the episode was solved 10 years later, but added technology is getting better. Defendant said nothing in response. When Garcia later asked defendant why he had asked that question and whether he had ever killed anyone, defendant became very upset, choked Garcia, and said, "Don't you ever ask me that."²

Garcia testified defendant wore his hair slicked back with gel and styled it by wearing a hair net or, occasionally, a black beanie. She also saw defendant with a handgun on one occasion.

² In a later interview with investigators, Garcia said defendant might have explained he asked the question because he claimed to have once hurt someone in Tijuana and did not know what happened to the person.

C. *Alicia Ayala*

Ayala and defendant began dating in 2008 and had a child together in 2012. They lived together in Lancaster with Ayala's three other children. They had a tumultuous relationship rife with "trust issues," infidelity, and domestic violence. On December 2, 2012, Ayala made an anonymous call to Crime Stoppers because she felt defendant was not paying enough attention to her at a social event. The report of the call read: "The caller states that Joe Mora and Klint are the suspects in the home invasion that happened in Chula Vista." The report was forwarded to Conrad and resulted in a series of interviews with Ayala.

1. *Ayala's First Recorded Interview (January 16, 2013)*

On January 16, 2013, Conrad and Nava interviewed Ayala at a sheriff's station in Lancaster. The interview was recorded. She explained the background of her relationship with defendant and characterized it as a "soap opera." They were subject to a 10-year domestic violence restraining order, which they were trying to lift. She did not see them "splitting any time soon."

Ayala said the day defendant was discharged from parole, he called and told her he had been interviewed by two detectives who said his DNA was on a hat related to a 10-year-old crime in Chula Vista. Defendant denied involvement, and Ayala told him to just come home.

When defendant arrived at home about 45 minutes later, Ayala was lying on the bed with their two-month-old son. Defendant "looked like he'[d] seen a ghost" and like he had been crying. He told Ayala he thought he would never see her or their son again.

He told her the detectives said his DNA was on a beanie found at a "home invasion robbery that . . . went wrong."³ Defendant said "Klint was into doing shit like that," and feared "they're gonna try to pin this on me." Ayala's mother and sister then arrived unannounced. Defendant stayed in his room much of the next two days. He refused to talk about the issue after that and "swept it under the carpet."

Ayala explained that about three years earlier she had overheard defendant talking on the phone about a longtime friend named Klint who had "snitched out a bunch of people" from his biker gang. Ayala had never met Klint or seen his picture. She told the investigators, "I have a feeling that Klint had everything to do with this."

Ayala also told the investigators, "You scared the shit out of him. I don't know what you guys said to him." They explained they showed him the composite sketch, the DNA profile report, and the crime scene picture with the beanie next to Sergio's body. They said defendant told them, "I don't know what you're talking about," and "I can't help you."

The investigators showed Ayala the crime scene picture and explained the beanie came off during a struggle. They told Ayala defendant denied ever wearing a beanie like that. Ayala agreed, "I've never seen him wear a beanie. I've see[n] him wear hats a lot. . . . I've never seen him wear a beanie." Investigators also showed Ayala the composite sketch and DNA test results. They assured her the case against defendant was strong.

³ Conrad testified he had not told defendant during the parole discharge meeting that Sergio was killed during a home invasion robbery.

2. Ayala's Second Recorded Interview (September 26, 2013)

Between January and September 2013, Ayala declined Conrad's further invitations to discuss the investigation. However, she called in September as her "way of getting back at" defendant after he had stayed with their son at another woman's house. When defendant returned their son to Ayala, defendant told her "he needed a break" from their relationship. Ayala acknowledged, "Every time me and [defendant] have issues, I call [Conrad]."

Ayala began her September 26, 2013 recorded phone conversation with Conrad, Nava, and San Diego Deputy District Attorney Andrea Freshwater by telling them, "Um, I'm hoping I can help you guys." She stated, "[T]hat day that I spoke to [Conrad] and [Nava], I left a little bit out and . . . probably one of the most important details" Ayala explained, "I've been over it and over it in my head and it, it, it sounds like he confessed to me that he did it." She elaborated that on the day defendant came home after being confronted by the investigators, "he was just shaking his head like he just messed up that he made a mistake [¶] . . . [¶] And he said, he said, 'I didn't wanna do it, dude, he just kept coming at me, he just kept coming at me, and he wouldn't back off. I told him to back off.'" Ayala said defendant told her he was with Klint and a third person, but he never identified the third person or specified whether it was a male or a female.

Freshwater pointed out to Ayala that her new assertion is "kind of . . . inconsistent" with her previous statement indicating defendant's concern that "they're gonna try to pin this on [him]." Freshwater asked Ayala why she hadn't mentioned this to

the investigators during their previous interview. Ayala responded she was scared that Klint would be getting out of prison soon, his girlfriend "lives out here," and Ayala was "more scared that [she's] throwing all of them under the bus."

Ayala added that defendant was "really stressed out" that investigators would talk to his ex-girlfriend, Nicole Mayes, "and he needed to guide her with words on what to say" because "she knew Klint drove a black truck."⁴

Ayala also mentioned that in April 2013, she "started getting . . . like really like worried" because defendant bought a lot of tattoo supplies and she overheard him talking about going to Mexico.⁵

Police arrested defendant the day after this interview. The People charged him with one count of murder (Pen. Code,⁶ § 187, subd. (a)), with an enhancement for intentionally and personally discharging a firearm causing great bodily injury and death (§ 12022.53, subd. (d)), and two special circumstance allegations for committing the murder while engaged in the commission of a robbery or burglary (§ 190.2, subd. (a)(17)(A), (G)).

⁴ Conrad testified he had not told defendant during the parole discharge meeting that the crime involved a dark-colored vehicle.

⁵ Ayala eventually acknowledged it was she who suggested that defendant go to Mexico, but he refused.

⁶ Undesignated statutory references are to the Penal Code.

3. *Ayala Recants*

Ayala felt guilty after defendant's arrest. She called Conrad because she was upset that news reports were identifying her as the basis for defendant's arrest warrant. In an unrecorded conversation with the investigators and prosecutor on October 30, 2013, Ayala recanted portions of her previous statements. She explained that when she previously said defendant told her "he kept coming at me," defendant was really referring to the fact that *the investigators* kept coming at him with questions and evidence. She also told them she lied when she told them defendant said "I didn't mean to do it."

After the October 30 interview, Ayala resumed contact with defendant. She e-mailed and talked with him on the phone, sent him phone cards, and put money in his jail account.

4. *The Investigators Play Recordings for Ayala (January 14, 2014)*

The investigators suspected defendant was manipulating Ayala to obtain helpful testimony, so they monitored his jailhouse communications. In doing so, they discovered he was having sexually explicit e-mail and telephone conversations with another woman, Jennifer.

Conrad called Ayala and told her, "I have something to show you that might open up your eyes to see what you're dealing with." Conrad and Nava met with Ayala in person on January 14, 2014. The meeting was not recorded. Without warning, they said "here you go," and played the recordings for Ayala. Ayala said the calls "were [just] short of being phone sex. Pornographic. . . . They were as disgusting and pathetic and

dirty as [they] could have been." Ayala was "a little bit more beyond hurt"; she was "furious."

Coincidentally, defendant called Ayala during this meeting. She "chewed him out," told him she was going to tell the truth, and that he would "rot in jail." Before hanging up, Ayala told defendant, "I'm going to go to court. I'm going to tell everything. I believe in the Bible. I'm going to get on the stand and I'm going to tell everything."

The investigators told Ayala they did not want to take a statement from her that day, but wanted to confirm that everything she had told them before was the truth. She confirmed it was.

5. Ayala's Third Recorded Interview (January 21, 2014)

A week later, on January 21, 2014, the investigators and prosecutor interviewed Ayala at her home in Lancaster. The interview was recorded. The prosecutor admonished Ayala: "[I]t's crucial for you now and anytime you testify to tell the truth. [¶] . . . [¶] I need you to assure me that what you're telling is not . . . because you're angry and you're not lying about anything now because you want . . . him to pay for disrespecting you or [¶] . . . [¶] [c]heating on you but that it is the truth." Ayala indicated she understood.

Ayala explained she was lying when she changed her story about what defendant meant when he said "he kept coming at me." She confirmed defendant was referring to Sergio, not the investigators. She reaffirmed defendant told her "it was a home invasion robbery that went wrong and I didn't want to do it but he just kept coming at me, kept

coming at me . . . , and . . . he just wouldn't back off, he wouldn't back off, he . . . kept coming at me, . . . I had to do it"

Ayala also reaffirmed defendant said he, Klint, and a third person were involved. She said defendant also told her he did not want investigators to talk to Nicole because she knew Klint had a black truck.

At the end of the interview, Nava asked Ayala if she had any questions for them. She responded, "Um, not that I can think of." But then she volunteered, "I mean, um, in one of . . . the pictures that you showed me [with] the beanie . . . tied, with like a hair tie," defendant "was always wearing beanies and they were tied like that. Always." She explained defendant did this "[t]hroughout [their] relationship" to press his hair down so it would not "puff up 'cause he has wild hair." Ayala acknowledged she had previously told the investigators she had never seen defendant wear a beanie, but reiterated that "he's had one, one that he would wear."

III. *Ayala's Preliminary Hearing Testimony*

Ayala testified at defendant's preliminary hearing. She said defendant called her on the way home from his parole discharge interview to tell her he had been confronted by the investigators; when he got home he looked pale and like he had been crying; he told her "it was a home invasion robbery that went wrong," "I didn't want to do it," but the victim "kept coming at me"; and he said he, Klint, and a third person were involved.

Ayala testified defendant used to wear beanies to shape his hair after showering. He would tighten the beanie by tying it with a hair tie or rubber band. Ayala acknowledged she hadn't told this to investigators during her first interview.

Ayala admitted she had recanted a portion of her story, but testified the recantation was a lie. She acknowledged she retracted the recantation after discovering defendant was communicating with another woman. Ayala said the prosecutor admonished her on the importance of telling the truth and confirmed her testimony was "the absolute truth."

IV. *Defendant's Motion to Dismiss*

Before trial, defendant moved to dismiss the case on the basis the prosecution's manipulation of Ayala violated his constitutional right to a fair trial. Alternatively, he requested that the court categorically exclude Ayala's testimony and pretrial statements. He argued the prosecution team's use of jailhouse recordings to manipulate Ayala violated his limited right to privacy under section 2600, which provides as follows: "A person sentenced to imprisonment in a state prison or to imprisonment pursuant to subdivision (h) of Section 1170 may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests."

The prosecutor asserted the investigators used defendant's recordings to counteract the "witness tampering" they suspected defendant was engaging in. She argued the use of the recordings was a valid penological interest because it furthered the "search for the truth."

The trial court denied defendant's motion. The court found the investigators' conduct was not unlawful, did not lead to an involuntary statement, and did not result in inherently unreliable statements. On this latter point, the court emphasized the issue was one of credibility, not admissibility: "You can cross-examine her all you want . . . about

her constant changes. You can cross-examine her about what the police did to her to make her final statement. And you can tell the jury based on all that they shouldn't believe a word she says. That is what advocacy is all about. I'm not going to interfere with that."

V. *The Focus on Ayala at Trial*

In her opening statement, the prosecutor warned jurors they would need to assess Ayala's credibility: "I'll tell you straight upfront, I don't know what she is going to say. She is still in love with him. They talk regularly on the phone and she wants him to come home. But I'll tell you what she has said repeatedly and what she has testified to under oath, and you will ultimately have to judge whether or not she is telling you the truth." The prosecutor also told jurors the investigators had disclosed defendant's communications with Jennifer to Ayala.

Defense counsel likewise stated: "I completely agree with [the prosecutor]. I have no idea what [Ayala] is going to say. That fact alone should give you pause." Counsel asked if playing "calls of [defendant] with another woman" is "how you get reliable information from somebody who is being manipulated." She stated, "It will be up to you to decide whether [Ayala's statements] were the truth or not."

In her trial testimony, Ayala referred to defendant as her boyfriend and indicated they were still in a relationship. She gave conflicting testimony regarding defendant's statements about his involvement in the crime. For example, she initially testified defendant said the murder occurred during a home invasion robbery that went wrong and that he told her "I didn't want to do it. I didn't want to do it. He kept coming at me. I

told him to back off but he wouldn't." However, on the next page of the reporter's transcript, she testified he did not say those things. She also denied defendant was concerned about Nicole speaking to investigators about Klint's black truck. In light of this, the trial court directed counsel to play the recordings of Ayala's interviews for the jury.

Defense counsel cross-examined Ayala regarding her credibility. For example, Ayala admitted (1) she told investigators it was defendant's plan to flee to Mexico, when in fact it was her plan; (2) she "took parts of what [defendant] said and parts from what the detectives said and put them together to be vindictive"; (3) she contacted an attorney because she was concerned she could get in trouble for lying; and (4) each of her calls to law enforcement was preceded by an argument or incident between Ayala and defendant.⁷

Defense counsel repeatedly addressed Ayala's credibility in closing argument. She accused Ayala of having "an agenda not shared by anyone in this room." Regarding the disclosure of defendant's communications with Jennifer, counsel argued "you're

⁷ Nevertheless, Conrad's testimony corroborated several aspects of Ayala's. For example, he interviewed defendant's ex-wife, whom defendant married in 2000, who said defendant wore beanies. Conrad also described a conversation he had with a sheriff's detective who was familiar with a domestic violence incident between defendant and Ayala. Ayala initially complained of her injuries at the hospital, but later recanted. However, photographs substantiated the injuries she initially reported. Conrad also stated Klint had been interviewed and reported that defendant owned a handgun. Klint, who was incarcerated at the time, voluntarily provided a DNA sample, which did not match the DNA on the beanie.

guaranteed . . . to get information after that bombshell that has nothing to do with reality or truth and everything to do with revenge."

The court instructed the jury with CALCRIM No. 226 regarding credibility of witnesses. Among other things, the jurors were instructed to consider whether a witness made "a statement in the past that is consistent or inconsistent with his or her testimony." The instruction also stated, "If you decide that a witness deliberately lied about something significant in this case, you should consider not believing anything that witness says. Or if you think the witness lied about some things, but told the truth about others, you may simply accept the part that you think is true and ignore the rest."

VI. *Verdict and Sentence*

During deliberations, the jury requested and received the recordings and transcripts of Ayala's three recorded interviews. After two and a half additional days of deliberations, the jury found defendant guilty of murder and found true the gun-use and special circumstance allegations. The trial court sentenced defendant to life without the possibility of parole, plus 25 years to life.

DISCUSSION

Defendant "contends the government's manipulation and use of Ayala as a witness shocks the conscience and deprived him of the fair trial required by due process under the Fifth and Fourteenth Amendments to the United States Constitution." Specifically, he contends the prosecution team's disclosure of his jailhouse communications violated section 2600 because doing so was not "reasonably related to legitimate penological interests." (§ 2600.) He further contends this outrageous governmental misconduct

deprived him of a fair trial because it rendered Ayala's retraction of her recantation and reaffirmation of her previous incriminating statements involuntary and unreliable.

The Attorney General counters that the disclosure was reasonably related to the legitimate penological interest of furthering a pending criminal investigation and searching for the truth. Alternatively, the Attorney General maintains that even if disclosing the communications constituted misconduct, it did not deprive defendant of a fair trial. We agree and thus need not, and do not, decide whether disclosing defendant's jailhouse communications to Ayala constituted governmental misconduct. Regardless of whether the investigators violated section 2600, it is clear the disclosure did not deprive defendant of a fair trial.

"Due process guarantees that a criminal defendant will be treated with 'that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial.' " (*United States v. Valenzuela-Bernal* (1982) 458 U.S. 858, 872.) "When conduct on the part of the authorities is so outrageous as to interfere with an accused's right of due process of law, proceedings against the accused are thereby rendered improper." (*Boulas v. Superior Court* (1986) 188 Cal.App.3d 422, 429; *People v. McIntire* (1979) 23 Cal.3d 742, 748, fn. 1 ["Sufficiently gross police misconduct could conceivably lead to a finding that conviction of the accused would violate his constitutional right to due process of the law."].) For misconduct to prevent a fair trial, it must be sufficiently egregious that it "shocks the conscience." (*Rochin v. California* (1952) 342 U.S. 165, 172; *People v.*

Maury (2003) 30 Cal.4th 342, 418, fn. 17 [misconduct must be " ' "so grossly shocking and so outrageous as to violate the universal sense of justice" ' "].)

"[T]he banner of outrageous misconduct is often raised but seldom saluted." (*United States v. Santana* (1st Cir. 1993) 6 F.3d 1, 4.) The cases in which courts have found due process violations typically involve interference with a defendant's attorney-client relationship. (See *People v. Guillen* (2014) 227 Cal.App.4th 934, 1007 [collecting cases]; but see *Rochin v. California, supra*, 342 U.S. at p. 166 [police violated defendant's bodily integrity by forcibly pumping his stomach to obtain evidence]; *Greene v. United States* (9th Cir.1971) 454 F.2d 783, 786-787 [government agents engineered and directed the defendant's alleged criminal activity from start to finish].)

Courts disagree on the applicable standard of review for evaluating a claim of outrageous governmental conduct. (Compare *People v. Uribe* (2011) 199 Cal.App.4th 836, 855-856 [independent review] with *People v. Velasco-Palacios* (2015) 235 Cal.App.4th 439, 445-446 [abuse of discretion].) We need not decide which standard applies because we would find no deprivation of due process even under the heightened independent review standard.

First, the conduct at issue here was not outrageous. The investigators were aware Ayala had previously recanted a complaint of domestic violence against defendant that was substantiated by photographic evidence and thus reasonably suspected Ayala's recantation here was motivated by her rekindled loyalty to defendant rather than her purported "realization" that her original incriminating statements were false. Sharing

defendant's communications was intended to show Ayala her loyalty to defendant was undeserved and to encourage her to tell the truth.

Second, the prosecution team did not coerce an involuntary statement from Ayala. They presented her with accurate factual information regarding defendant's communications. They impressed on her the need to be honest and to refrain from exacting revenge. And they declined to immediately take a new statement from her, but rather, gave her a week to cool off. Thereafter, she participated in a recorded interview in which she not only confirmed the veracity of her original statements, but also provided additional details. These circumstances differ dramatically from those in *People v. Lee* (2002) 95 Cal.App.4th 772, on which defendant relies, where police coerced a witness into implicating the defendant by threatening to charge the witness with the underlying murder if he did not do so. (*Id.* at pp. 785-786.)

Third, the prosecution team's conduct did not render Ayala so inherently unbelievable that the trial court was required to exclude her statements and testimony as a matter of law. To the contrary, Conrad's testimony established Ayala knew details about the crime that he had not disclosed to defendant during the parole discharge meeting (e.g., that it was a home invasion robbery gone wrong and that Klint had a black truck similar to the suspicious dark-colored SUV). Ayala's insinuation that defendant was the shooter—contrary to his claim to have *never* possessed a gun—was corroborated by each of the two ex-girlfriends' testimony that they had seen him with a gun, as well as Conrad's testimony that Klint told an investigator defendant owned a gun. Ayala's statement that defendant wore beanies was also corroborated by the ex-girlfriends and one ex-wife (via

Conrad's testimony). And Ayala's statement that defendant said he told the victim to "back off" was consistent with Cecilia's testimony that she heard the attacker yell at Sergio before shooting him.

Finally, the trial proceedings ensured the jury was given an adequate opportunity to evaluate Ayala's credibility. Both opening statements questioned Ayala's credibility and referenced the investigators' disclosure to her of defendant's jailhouse communications. Defense counsel vigorously cross-examined Ayala regarding her credibility, as the trial court had suggested when it denied the pretrial motion to dismiss. Defense counsel again challenged Ayala's credibility during closing argument. And the court instructed the jury regarding evaluation of witnesses' credibility. The fact that during deliberations the jury requested Ayala's statements strongly suggests jurors scrutinized her statements.

In sum, Ayala's credibility was a focal issue at virtually every stage of trial—opening statements, cross-examination, closing arguments, jury instructions, and jury deliberations. In light of this, the prosecution team's disclosure of defendant's jailhouse communications does not rise to the level of outrageous conduct that deprived defendant of a fair trial.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

AARON, J.